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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/720,418	11/24/2003	Ray Skaggs	SKA839.0001	5111

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EXAMINER

WARTALOWICZ, PAUL A

ART UNIT	PAPER NUMBER
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1754

DATE MAILED: 10/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/720,418

Applicant(s)

SKAGGS, RAY

Examiner

Paul A. Wartalowicz

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,4,6,7,10,12,13 and 15-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,4,6,7,10,12,13 and 15-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Response to Arguments

Applicant's arguments regarding the 35 U.S.C. 112, 35 U.S.C. 102(b),(e) and 35 U.S.C. 103(a) rejections of record have been considered but they are moot since the rejections have been withdrawn.

NEW REJECTIONS

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1, 3, 4, 6, 7, 10, 12, 13, and 15-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rylander (U.S. 4749011) in view of Steinmetz (U.S. 5884454) and Mezzanotte et al. (U.S. 3736973).

Rylander teaches a flexible plastic sheeting that has an initial flat configuration and constructed of a suitable material having the chemical and physical properties wherein the sheet may be readily manually deformed to a substantially cylindrical configuration of substantially any desired diameter which will return to its normal flat configuration upon the complete release of external pressures thereon (col. 1, lines 46-58) and a plurality of gripping ridges at the top of the sheet (fig. 7, #42,44). Rylander fails to teach at least one memory retention unit being imbedded in said panel and constructed from a second material sufficiently flexible for responding to pressure thereon for deforming into said substantially cylindrical configuration and having sufficient memory characteristics for returning said panel body to its normal flat planar configuration when said pressure has been removed therefrom.

Steinmetz, however, teaches a resilient rod made from metal (col. 1, lines 52-55; col. 1, lines 63-64) that is imbedded in a trash bag (fig. 1, #21,28) for the purpose of stretching the bag open such that an arm load of trash may be placed within the circle (col. 1, lines 55-59). Therefore, it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have provided the rod (fig. 1, #21,28) of Steinmetz in the plastic sheet (fig. 1, #14) of Rylander because it is well known that one or more metal cords can be imbedded in a polymer to strengthen and add rigidity as taught by Mezzanotte et al. (col. 3, lines 7-15) which provides a material that meets the requirements and purpose of Rylander.

As to claim 4, Rylander teaches that the flat body portion can be constructed from a suitable material having sufficient flexibility for rolling or forming thereof into a

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substantially cylindrical configuration, a sufficient memory characteristic for resisting taking a "set" in the rolled configuration thereof (col. 3, lines 10-18) but fails to teach the material which the article is constructed from is rubber. However, it would be obvious to one of ordinary skill in the art to use rubber material because rubber meets the material limitations.

As to claims 6, 13, and 15, Steinmetz teaches that the resilient rod can be constructed from a material which tries to straighten out, stretching the bag opening into a circle that can be made from many materials such as metal or plastic (col. 1, lines 52-55; col. 1, lines 63-64) but fails to teach that the material can comprise specifically spring steel or rubber. However, it would have been obvious to one of ordinary skill in the art to use spring steel or rubber because spring steel and rubber are metals or plastics that meet these limitations.

As to claims 17 and 18, Steinmetz teaches a resilient rod that is embedded in a trash bag and that the rod can comprise many materials such as metal or plastic (col. 1, lines 63-64; col. 2, lines 3-4). It would have been obvious to one of ordinary skill in the art to use rods having either a rectangular cross-section or a circular cross-section because Steinmetz is silent as to any particular cross-section being required and would therefore be open to such readily available rods.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul A. Wartalowicz whose telephone number is (571) 272-5957. The examiner can normally be reached on 8:30-6 M-Th and 8:30-5 on Alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stanley Silverman can be reached on (571) 272-1358. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Paul Wartalowicz
October 19, 2005



COLLEEN P. COOKE
PRIMARY EXAMINER